

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

JAMES GRZELSO,	)	Case No.: 1:21-cv-1371 JLT EPG (PC)
	)	
Plaintiff,	)	ORDER ADOPTING THE FINDINGS AND
	)	RECOMMENDATIONS AND DISMISSING
v.	)	CERTAIN CLAIMS AND DEFENDANTS
	)	
RAYTHEL FISHER, JR., et al.,	)	(Doc. 26)
	)	
Defendants.	)	
	)	

The assigned magistrate judge reviewed Plaintiff's Second Amended Complaint and found that he stated no cognizable claims. (Doc. 26.) The magistrate judge found Plaintiff did not allege facts sufficient to support his claims for unconstitutional conditions of confinement, denial of access to the courts, due process in connection with false statements, the ADA, the Rehabilitation Act, Cal. Code Regs. Tit. 15 § 2040(a), and the U.S. Sentencing Guidelines § 3C1.1. (*Id.* at 6-15, 18-19.) In addition, Plaintiff failed to allege any facts supporting a theory of supervisor liability for any claim. (*Id.* at 20.) Because Plaintiff was previously granted the opportunity to cure the pleading deficiencies for these claims and failed to do so, the magistrate judge found leave to amend would be futile and recommended the claims be dismissed without leave to amend. (*Id.*)

Furthermore, the magistrate judge found Plaintiff failed to state a claim for a violation of his rights under the First Amendment, Fourteenth Amendment, and Title VII related to CO Sauzo "throwing away his 'Jewish prayer.'" (Doc. 26 at 16.) The magistrate judge observed Plaintiff made

1 these allegations for the first time in the SAC, and recommended Plaintiff be granted “leave to amend  
2 only his claim that Sauzo violated his First Amendment rights to freely exercise his religion by  
3 throwing away Plaintiff’s ‘Jewish prayer.’” (*Id.* at 16-17.)

4 In his objections to the findings and recommendations, Plaintiff repeats the same allegations as  
5 those presented in his prior pleadings, and the new allegations he adds do not undermine the findings  
6 of the magistrate judge related to his pleading deficiencies.

7 According to 28 U.S.C. § 636(b)(1)(C), this Court has conducted a de novo review of this case.  
8 Having carefully reviewed the entire matter—including Plaintiff’s objections—the Court finds the  
9 Findings and Recommendations are supported by the record and proper analysis. Based upon the  
10 foregoing, the Court **ORDERS**:

- 11 1. The Findings and Recommendations issued on February 9, 2022 (Doc. 26) are  
12 **ADOPTED**.
- 13 2. Plaintiff’s claims in the Second Amended Complaint related to unconstitutional  
14 conditions of confinement, denial of access to the courts, due process in connection  
15 with false statements, the ADA, the Rehabilitation Act, Cal. Code Regs. Tit. 15 §  
16 2040(a), and the U.S. Sentencing Guidelines § 3C1.1 are **DISMISSED** for failure to  
17 state a claim upon which relief can be granted.
- 18 3. The Clerk of Court is directed to update the docket to terminate all defendants except  
19 defendant B. Sauzo.
- 20 4. Plaintiff is granted leave to amend only his claim for a First Amendment violation  
21 against defendant Suazo related to throwing away Plaintiff’s “Jewish prayer.”
- 22 5. Plaintiff **SHALL** file any Third Amended Complaint—including facts related to the  
23 alleged First Amendment violation only—within 30 days of the date of service of this  
24 Order. **Plaintiff is advised that failure to comply with this order will result in the**  
25 **dismissal of the action.**

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1           6.       This case is referred to the assigned magistrate judge for further proceedings.

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3 IT IS SO ORDERED.

4       Dated: April 13, 2022

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UNITED STATES DISTRICT JUDGE

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